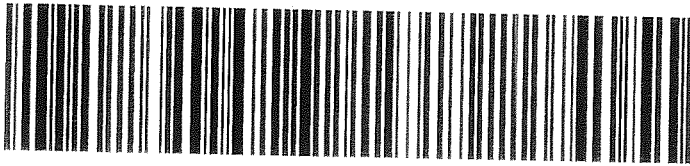


Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
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www.wvsos.com

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9214 8901 1251 3410 0002 4081 59

JOSEPH M CARNEY
20 APPLETREE LANE
HILLSDALE, NJ 07642

Control Number: 227735

Defendant: JOSEPH M CARNEY
20 APPLETREE LANE
HILLSDALE, NJ 07642 US

County: Federal

Civil Action: 5:18-CV-166

Certified Number: 92148901125134100002408159

Service Date: 10/12/2018

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, **not to the Secretary of State's office.***

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Northern District of West Virginia

ORIGINAL
FOR RETURN

Diana Mey

Plaintiff(s)

v.

Environmental Safety International, Inc.
a/k/a Septic Safety
a/k/a Activator 1000
Joseph M. Carney, Joe Reed

Defendant(s)

Civil Action No. 5:18-cv-166

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Joseph M. Carney
20 Appletree Ln.
Hillsdale, NJ 07642-1228

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Benjamin Sheridan
Klein & Sheridan, LC
3566 Teays Valley Road
Hurricane, WV 25526
(304) 562-7111

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Cheryl Dean Riley

CLERK OF COURT

Date: 10-3-18

L.M. Murphy

Signature of Clerk or Deputy Clerk

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Diana Mey**DEFENDANTS**

Environmental Safety International, Inc. a/k/a Septic Safety, a/k/a Activator 1000, Joseph M. Carney, Joe Reed

(b) County of Residence of First Listed Plaintiff **OHIO**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Benjamin M. Sheridan
Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526
(304) 562-7111**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (Specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. §227(c)(5), 47 U.S.C. §227(b)(3)(B), 46A-6-104, 46A-6F-601(2), 46A-6F-601(3), 61-3C-14aBrief description of cause:
Violation of the FDCPA and WCCPA**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES or if it demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/03/2018

SIGNATURE OF ATTORNEY OF RECORD

Benjamin M. Sheridan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**Diana Mey
Plaintiff,**

vs.

Case No. *5:18-cv-166*

**Environmental Safety International, Inc.
a/k/a Septic Safety
a/k/a Activator 1000
Joseph M. Carney
Joe Reed
Defendants.**

COMPLAINT

Now comes the Plaintiff, Diana Mey, by and through her attorney, Benjamin Sheridan, of the law firm of Klein and Sheridan, LC, and hereby states as follows:

JURISDICTION AND PARTIES

1. The Plaintiff, Diana Mey, is a resident of Ohio County, West Virginia.
2. Jurisdiction of this Court arises pursuant to 47 U.S.C. § 227 et Seq.
3. This action arises out of Defendants' violations of the Telephone Consumer Protection Act ("TCPA"), violations of orders, rules and regulations promulgated the Federal Communications Commission (FCC) relating to the TCPA, the National Do Not Call registry and by its invasion of Plaintiff's privacy by repeatedly via an automated dialer system.
4. The Plaintiff is a person who falls under the protection of Article 2 of the West Virginia Consumer Credit and Protection Act (herein "WVCCPA") and is entitled to the remedies set forth in Article 5 of the WVCCPA.
5. The Defendant, Environmental Safety International, Inc. a/k/a Septic Safety a/k/a Activator 1000 (Septic Safety), is a corporation having its principal offices in a state

other than West Virginia and which does business in West Virginia.

6. Upon information and belief, Septic Safety is defunct or at least does not pick up it's mail anymore.
7. The Defendant, Joseph M. Carney, is an owner and officer of Septic Safety.
8. The Defendant, Joe Reed, is an owner and officer of Septic Safety.
9. The Defendants are debt collector as defined by *West Virginia Code* §46A-2-122(d) engaging directly or indirectly in debt collection as defined by *West Virginia Code* §46A-2-122(c) within the State of West Virginia, including, Ohio County, West Virginia.
10. Venue is proper in this Court because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.

FACTUAL ALLEGATIONS

11. Plaintiff has a telephone number that is assigned to a cellular telephone service.
12. All of Plaintiff's telephone numbers are on the national "Do Not Call" registry.
13. In or about April of 2004, Septic Safety was cited by the FCC for prerecorded telephone calls.
14. In or about February of 2005, the FCC issued a Notice of Apparent Liability for Forfeiture in the amount of \$14,500 to Septic Safety, finding that "that "Despite the (2004) citation's warning that subsequent violations could result in the imposition of monetary forfeitures, the Commission has received additional consumer complaints indicating that Septic Safety apparently continued to send illegal prerecorded, unsolicited advertisements after receiving the citation."
15. In or about June of 2005 the FCC issues forfeiture as to Septic Safety in the amount of \$9,000 for "willful and repeated violations..." of the telephone protection laws.

16. On or about December 29, 2016 at approximately 1:14 PM, Ms. Mey received an unsolicited call from a phone number associated with the Defendants, (803) 489-7604. This was a prerecorded call about septic tanks and cesspools. The call prompted Ms. Mey to leave her name, and Ms. Mey did so solely for the purpose of identifying who was calling her in an unsolicited manner.
17. On or about December 30, 2016, Ms. Mey received a call from Karen with “Activator 1000”
18. Upon information and belief, Activator 1000 is an alias of the Defendant Septic Safety.
19. Ms. Mey purchased Activator 1000 on the call with Karen for the purposes of identifying who was calling her in an unsolicited manner.
20. On or about January 9, 2017, Ms. Mey received an additional prerecorded call, identical to the call she received on December 29, 2016, pitching septic tank and cesspool products.
21. On or about January 11, 2017, Ms. Mey receives the Activator 1000 product from Septic Safety along with a letter identifying the company as Environmental Safety International, Inc. This letter was signed by Defendant Joseph Carney.
22. Plaintiff returned the Activator 1000 for a full refund.
23. Plaintiff has been annoyed, harassed, harangued, and otherwise bothered by unwanted telephonic solicitation phone calls, despite her number being registered with the federal do not call database.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(b)(3)(B)

24. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.
25. On information and belief, Defendant used an automatic telephone dialing system as defined by 47 USC § 227 (a)(1) when it made each and every call to Plaintiff's number assigned to a cellular telephone in the last four years.
26. Upon information and belief, the Defendant uses pre-recorded messages in its calls to consumers such as the Plaintiff.
27. Upon information and belief, the Defendant has been sanctioned by the FCC in the past for violations of the TCPA.
28. On information and belief, Defendant did not have Plaintiff's prior express written consent prior to contact Plaintiff at his wireless number using an automatic telephone dialing system.
29. Defendant made the calls to Plaintiff willfully.
30. Defendant made the calls to Plaintiff knowingly.
31. Defendant's acts in making the calls to Plaintiff were not accidental.
32. Plaintiff's privacy has been invaded as a result of Defendant's acts.
33. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT II

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(c)(5)

34. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.

35. Defendant made telephone solicitation calls to Plaintiff.
36. Plaintiff informed Defendant Plaintiff is on the Do Not Call Registry.
37. Upon information and belief, the Defendants knew or reasonably should have known that the Plaintiff was on the national "Do Not Call List."
38. Defendant made these telephone solicitations despite Plaintiff's number having been registered on the national "Do Not Call List."
39. On information and belief, Defendant fails to properly maintain or train its personnel how to comply with the TCPA and the FCC rules and regulations.
40. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT III

INJUNCTIVE RELIEF

41. The Plaintiff incorporates the previous paragraphs as if fully set forth herein.
42. Plaintiff requests that this Court grant it injunctive relief preventing Defendants, their agents, employees, representatives or their successors and assigns from taking any action contrary to or in violation of any part of the TCPA 47 U.S.C. § 227 pursuant to 47 U.S.C. § 227 (b)(3)(A).

COUNT IV

COMMON LAW NEGLIGENCE

43. The Plaintiff incorporates the previous paragraphs as if fully set forth herein.

44. Defendant negligently failed to train, supervise, monitor or otherwise control its employees to ensure that its employees did not violate the TCPA as alleged in Counts I and II.
45. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT V

COMMON LAW INVASION OF PRIVACY

46. The Plaintiff incorporates the previous paragraphs as if fully set forth herein.
47. The Plaintiff has, and have, an expectation of privacy to be free from harassing and annoying telephone calls within the confines of Plaintiff's home.
48. The acts of the Defendant in placing telephone calls to Plaintiff's home telephone number invaded, damaged and harmed Plaintiff's right of privacy.
49. As a result of the Defendant's actions, the Plaintiff suffered emotional distress.
50. As a result of the Defendant's action, the Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT VI

COMMON LAW INVASION OF PRIVACY

51. The Plaintiff incorporates the previous paragraphs as if fully set forth herein.
52. It is an unfair and deceptive act and practice to call someone who is on the federal "Do Not Call" registry and attempt to sell the products and violations West Virginia Code § 46A-6-104.
53. It is unfair to avoid the normal avenues of commerce and harass someone at their phone

about purchasing products they may not want in violation of West Virginia Code § 46A-6-104.

54. It is unfair to use pre-recorded messages to call someone who has not requested to be contacted by that business in an attempt to get them to purchase products they did not solicit in violation of West Virginia Code § 46A-6-104.

55. Plaintiff has an out of pocket expense because she purchased the product and had to return it, including postage.

56. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT VII

VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT W.V.C. §46A-6F-601(2)

57. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.

58. Defendant engaged Plaintiff repeatedly or continuously in an annoying, abusive, or harassing manner.

59. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT VIII

VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION

ACT W.V.C. §46A-6F-601(3)

60. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.
61. Defendant initiated an outbound call with Plaintiff despite Plaintiff having entered her number on the "Do Not Call" registry prior to this contact and had reasonable expectations to not be called by or on behalf of a telemarketer.
62. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

COUNT IX

**VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION
ACT W.V.C. §61-3C-14a**

63. Plaintiff incorporates by reference all paragraphs of this Complaint as though fully stated herein.
64. Defendant placed an unsolicited call to Plaintiff, despite Plaintiff's telephone number being on the "Do Not Call" registry, with intent to harass or abuse Plaintiff into paying for a product they had not expressed interest in purchasing.
65. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

DEMAND FOR RELIEF

Plaintiff demands from the Defendant:

- a. damages pursuant to 47 U.S.C. § 227 (b)(3)(B) for each and every call in the amount of at least \$500 for each such act that this Court finds were not made willfully or not made knowingly;
- b. damages pursuant to 47 U.S.C. § 227 (b)(3)(B) for each and every call in the amount of \$1,500 for each such act that this Court finds were made willfully or were made knowingly; and
- c. damages pursuant to 47 U.S.C. § 227 (c)(5) for each and every failure to abide by the TCPA and FCC's do-not-call-list requirements in the amount of at least \$500 for each such act that this Court finds were not made willfully or not made knowingly;
- d. damages pursuant to 47 U.S.C. § 227 (c)(5) for each and every failure to abide by the do-not-call-list requirements in the amount of \$1,500 for each such act that this Court finds were made willfully or were made knowingly; and
- e. an order granting Plaintiff injunctive relief preventing Defendants, their agents, employees, representatives or their successors and assigns from taking any action contrary to or in violation of any part of the TCPA 47 U.S.C. § 227 pursuant to 47 U.S.C. § 227 (b)(3)(A)
- f. \$500 per violation of the Telephone Consumer Protection Act as provided for in in 47 USCS § 227(b)(3)(B);
- g. \$200 per violation of the West Virginia Consumer Credit and Protection Act;
- h. \$1,500 per violation of the Telephone Consumer Protection Act to the extent the violations were willful 47 USCS § 227(b)(3)(C);
- i. Plaintiff be awarded actual damages and statutory damages as allowed for in *W. Va. Code*

§ 46A-6F-701;

- j. The Plaintiff be granted general damages and punitive damages for Defendant's conduct alleged in Count V;
- k. Such other relief as the Court shall deem just and proper under the attendant circumstances.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE

DIANA MEY
BY COUNSEL

BY: /s/ Benjamin M. Sheridan
Benjamin M. Sheridan (# 11296)
Counsel for Plaintiff
Klein & Sheridan, LC
3566 Teays Valley Road
Hurricane, WV 25526
(304) 562-7111
Fax: (304) 562-7115